

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

---

**In re: PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE LITIGATION**

---

)  
) **MDL No. 1456**  
) **Master File No. 01-CV-12257-PBS**  
) **Subcategory Case. No. 06-11337**  
)

**THIS DOCUMENT RELATES TO:**

) **Hon. Patti B. Saris**  
)

)  
) *United States of America ex rel. Ven-A-Care of the*  
) *Florida Keys, Inc., et al. v. Dey, Inc., et al.,*  
) Civil Action No. 05-11084-PBS  
)

---

**DECLARATION OF NEIL MERKL IN SUPPORT OF DEY  
DEFENDANTS' MOTION TO EXCLUDE FROM EVIDENCE THE  
REPORTS AND TESTIMONY OF STEPHEN W. SCHONDELMAYER**

**NEIL MERKL** declares, pursuant to 28 U.S.C. § 1746, that:

1. I am a member of the law firm of Kelley Drye & Warren LLP, counsel to Dey Pharma, L.P. (formerly known as Dey, L.P.), Dey, Inc., and Dey L.P., Inc. (collectively "Dey"). I am admitted to practice law in the State of New York and have been admitted *pro hac vice* in this action.
2. I make this Declaration in support of Dey's Motion to Exclude from Evidence the Reports and Testimony of Stephen W. Schondelmeyer.
3. I make this declaration from my own personal knowledge of the facts and circumstances set forth herein. The source of my knowledge is my review of Kelley Drye & Warren LLP's files with respect to this litigation, including my review of the documents annexed as exhibits hereto.

4. Attached hereto as Exhibit A are true and correct copies of excerpts from the deposition transcripts of Dr. Schondelmeyer, dated February 25, 26, 27 and May 21, 22, 2009.

5. Attached hereto as Exhibit B is a true and correct copy of the Expert Report of Dr. Schondelmeyer, dated January 22, 2009.

6. Attached hereto as Exhibit C is a true and correct copy of the Rebuttal Report of Dr. Schondelmeyer, dated April 23, 2009.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 24, 2010.

/s/Neil Merkl

**NEIL MERKL**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on March 24, 2010, a copy to LexisNexis File & Serve for posting and notification to all parties.

\_\_\_\_\_/s/Neil Merkl